

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, February 17, 1998

DIVISION ONE

A081153 -- San Francisco Housing Authority v. The Superior Court of the County of San Francisco, Felicia D. Sanders, R.P.I.

Let a peremptory writ of mandate issue commanding respondent San Francisco Superior Court to set aside its December 3, 1997 order granting plaintiff's motion to quash defendant's subpoenas in its entirety, and to instead deny the motion. Petitioner shall recover its costs. Stein, Acting P.J. We concur: Dossee, J., Swager, J. (Not for Publication.)

A076772 -- George E. Mohun et al. v. Harold R. Ebright, Jr., et al.

Though our analysis has disclosed error only in a portion of the judgment, we are obliged to enter a general reversal to avoid restricting the discretion of the trial court on remand. The judgment for partition is not severable into discrete parts. Accordingly, we cannot say that the proper exercise of the court's discretion in modifying a particular portion of the judgment may not possibly justify modification of other parts of the judgment.

The judgment is reversed.

Costs to appellant. Swager, J. We concur: Strankman, P.J., Dossee, J.
(Not for Publication.)

Tuesday, February 17, 1998 (continued)

DIVISION FOUR

A075278 -- Donald Barnett et al. v. Glenborough Realty Corporation et al., Anthony Blumberg.

We affirm the judgment. Reardon, J. We concur: Hanlon, P.J., McGuiness, J. (Not for Publication.)

A071280 -- Diane L. Sangster v. Phoebe Hearst Cooke et al.

The judgment and the order denying the motion for judgment NOV are affirmed. Sangster shall recover her costs of appeal. Poché, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A078911 -- Bay Area Material Handling, et al. v. William Broach, et al.

By The Court: The above entitled appeal is transferred from Division Three to Division Four of this court. This appeal is related to an appeal (A072765 - Yale Material Handling et al, v. Yorio et al.) decided by Division Four of this court on April 23, 1997 which requires by this court's Internal Operating Practices and Procedures, Section 21(b), transfer of this case to Division Four. This order is made pursuant to Rule 20(b)(1) of the California Rules of Court. Strankman, Administrative Presiding Justice.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION THREE

TUESDAY, FEBRUARY 17, 1998

Court convened at 9:00 a.m. in its Courtroom at 303 Second Street, South Tower, Fourth Floor, San Francisco, California.

Present: Phelan P.J., Corrigan J., Parrilli, J., and J. Casados, Deputy Clerk

A074730 The People,
 v.

Goodwin Romero Brodit.

A079648 In re Goodwin R. Brodit on Habeas Corpus.

Cause called and argued by Mark Shenfield, counsel for appellant and petitioner, and Deputy Attorney General, George Hindall, counsel for respondent. Cause ordered submitted.

A074807 Jeanette M. Freeman,
 v.

First American Insurance Company.

Cause called and argued by Andrew Pierce, counsel for appellant, and Susan Handelman, counsel for respondent. Cause ordered submitted.

Justice Walker took the bench.

A078867 The Regents of University of California et al.,
 v.

The Superior Court of San Francisco;
Tim Molloy et al.

Cause called and argued by Cynthia Larsen, counsel for appellants, and Daniel Tokai, counsel for real parties in interest. Cause ordered submitted.

Justice Parrilli left the bench.

- A075232 In re Estate of Arthur D. Bridges.
Daniel C. Bridges,
v.
Beverly Bridges et al.
Cause called and argued by Paul Fogel, counsel for appellant, and Neil Horton, counsel for respondents. Submission deferred. Appellant granted five days to file a supplemental letter brief and responsive brief due five days from the filing of said brief. The cause to be submitted upon filing of the responsive brief.
- A077089 In re Marriage of Samuel and Susan Torres.
Samuel J. Torres,
v.
Susan L. Torres.
Cause called and argued by Freda Pechner, counsel for appellant, and William M. Hilton, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION THREE

TUESDAY, FEBRUARY 17, 1998

Court reconvened at 1:30 p.m. in its courtroom at Marathon Plaza, South Tower Fourth Floor, 300
Second Street, San Francisco, CA.

Present: Phelan J., Parrilli J., Walker J., and C. Turner, Deputy Clerk.

A076237 Mervyn Silberberg

v.

David Herbert Silberberg

Cause called and argued by David Suddendorf, counsel for appellant, and David H. Ezgan,
respondent in pro per. Cause ordered submitted.

Justice Phelan left the bench and Justice Corrigan took her place on the bench.

A076040 James Saras

v.

Tri-Valley Growers Association

Cause called and argued by Neil Papiano, counsel for appellant, and James Severson, counsel for
respondent. Cause ordered submitted.

Court Adjourned

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, February 18, 1998

DIVISION ONE

A077440 -- The People v. Kevin Michael McHenry.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A078449 -- The People v. Alan Dale Willis.

We reverse appellant's admission of his prior conviction and sentence and remand the matter for further proceedings to determine the truth of the allegation of the prior and for resentencing. In all other respects, the judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for publication.)

DIVISION TWO

A081461 -- Danilo Suva v. Caremark Pharmacy, et al.

By The Court: The appellant having failed to procure the record on appeal within the time limits allowed or within any valid extensions of these time limits, the appeal filed January 8, 1998 is ordered dismissed. (See rule 10(c), California Rules of Court.) Kline, P.J.

Wednesday, February 18, 1998 (continued)

DIVISION THREE

A075644 -- Jack Einheber v. Regents of the University of California.

The judgment is reversed. Einheber shall recover his costs on appeal.
Parrilli, J. We concur: Corrigan, Actg. P.J., Walker, J. (Not for Publication.)

A076432 -- In re Daniel K., a Person Coming Under the Juvenile Court Law.

The October 31, 1996 order denying mother's motion to modify the guardianship order (§ 388) is affirmed. The appeal is dismissed to the extent it purports to challenge the July 31, 1996, order denying mother's motion for continuing discovery. Parrilli, J. We concur: Phelan, P.J., Corrigan, J. (Certified for Partial Publication.)

A076854 -- The People v. James Earl Vick.

By The Court: The petition for rehearing is denied. Phelan, P.J.

A077379 & A078156 -- Michael Thomas Plante v. Diana L. Wallin.

In A077379, that portion of the court's order appointing a special master is reversed. The portion of the court's order directing the parties to pay attorney fees is affirmed. In A078156, the appeal is dismissed. The matter is remanded to the trial court for further proceedings. The parties are to bear their own costs on appeal. Corrigan, Act. P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

A077964 -- In re Estevan B., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Parrilli, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

Wednesday, February 18, 1998 (continued)

A078717 -- The People v. Robert Leland Holloway.

The judgment is affirmed. The superior court is directed to prepare an amended abstract of judgment consistent with this opinion. Corrigan, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

DIVISION FOUR

A079471 -- The People v. Scott Thomas Tolman.

The judgment is affirmed. Poché, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

DIVISION FIVE

A078582 -- Norcal Piggyback Transportation, Inc. v. A & G Transportation, Inc.

The award of storage costs is reversed. The judgment is otherwise affirmed. Each party to bear its own costs on appeal. Haning, J. We concur: Peterson, P.J., Jones, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Wednesday, February 18, 1998

The Court met at 9:30 a.m. in its courtroom at 303 - 2nd Street, Fourth Floor, San Francisco. Present: Kline, P. J., Haerle, J., Lambden, J. and S. Graham, Deputy Clerk.

- A078228 The People
 v.
 Thomas Waltermán Douglas
Cause called and argued by Harvey Sniderman, counsel for appellant and Michael Banister, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A077853 The People
 v.
 Stephen M., a Minor
Argument waived; cause ordered submitted.
- A074469 Contra Costa Water District
 v.
 Alba C. Houston Orchard Company, Inc.
Cause called and argued by Carl Nelson, counsel for appellant and Paul Lamphere, counsel for respondent. Cause ordered submitted.
- A077046 Joseph B. Bechelli, et al.
 v.
 Luins H. Williams, Jr.
Cause called and argued by Tyree Jones, counsel for appellant and William Keegan, counsel for respondent. Cause ordered submitted.

A075154 The People
v.
Jeffrey Payton Bryden and
Joaquin Padin

A080988 In re Joaquin Padin, on Habeas Corpus
Causes called and argued by Paul Couenhoven, counsel for appellant
Padin, Kat Kozik, counsel for appellant Bryden and Aileen Bunney,
Deputy Attorney General, counsel for respondent. Causes ordered
submitted.
Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P. J., Lambden, J., Ruvolo,
J. and S. Graham, Deputy Clerk.

A080291 In re Christina H., a Minor
San Francisco Dept. of Human Services
v.
Wallace H.
Motion called and argued by Ellen Forman, Deputy City Attorney, counsel
for respondent and Janet Saalfeld, counsel for appellant. Motion taken
under submission.

A075992 The People
v.
Sothin Joan Damlong
Cause called and argued by Philip Brooks, counsel for appellant and
Sharon Wooden, Deputy Attorney General, counsel for respondent. Cause
ordered submitted.

A078263 Harold A. Julien
v.
County of Alameda
Cause called and argued by Harold Julien, appellant in propria persona and
Sloane Morgan, counsel for respondent. Cause ordered submitted.

A078673 ITT Hartford
v.
Frank Logan, et al.
Cause called and argued by Russell Hanlon, counsel for appellant and
Dennis Moriarty, counsel for respondent. Cause ordered submitted.

Court recessed until Thursday, February 19, 1998 at 9:30 a.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, February 19, 1998

DIVISION ONE

A077738 -- Adam Lucarelli et al. v. Audrey Perceval.

The judgment is modified to award the Lucarellis \$24,300.81. As so modified, the judgment is affirmed. Each party will bear its own costs on appeal. Stein, J. We concur: Strankman, P.J., Dossee, J. (Not for Publication.)

DIVISION TWO

A076760 -- The People v. Alfred Dennis White.

A080427 -- In re Alfred Dennis White, on Habeas Corpus.

The judgment is affirmed. The petition for writ of habeas corpus is denied. Lambden, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A077698 -- The People v. Dolores Goltiao Daquioag.

We find no meritorious issues to be argued.

The judgment is affirmed. Ruvolo, J. We concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A077740 -- In re the Marriage of Hafferkamp.

By The Court: The written opinion which was filed on January 20, 1998, has now been certified for publication pursuant to rule 976(b) of the California Rules of Court, and it is therefore ordered that it be published in the Official Reports. Kline, P.J.

Thursday, February 19, 1998 (continued)

A077861 -- Howard G. Gray v. San Mateo County General Hospital et al.

We therefore dismiss the appeal without reaching its merits. Lambden, J. We concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

A078150 -- Rosa Tso v. Franklin Resources, Inc., et al.

We therefore affirm the judgment; Franklin Resources is awarded costs on appeal. Lambden, J. We concur: Haerle, Acting P.J., Ruvolo, J.

A078470 -- The People v. Glenn Edward Gaither.

The judgment is affirmed. Lambden, J. We concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

A078534 -- Alan Barcelona et al. v. Department of Personnel Administration.

We affirm the judgment and DPA is awarded costs. Lambden, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A081217 -- Christopher W. v. The Superior Court of Lake County, Lake County Department of Social Services, R.P.I.

The petition is denied on the merits. (Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888 [subsequent challenge by appeal barred]; § 366.26, subd. (l)(1).) Given the nearness of the section 366.26 hearing set for March 9, 1998, our decision is final as to this court immediately (rule 24(d)). Lambden, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

Thursday, February 19, 1998 (continued)

DIVISION THREE

A076160 -- Lloyd Weisz v. Johnson Scaffolding Company et al.

The judgment is reversed as to Hi-Lift only. Costs to appellant. Parrilli, J. We concur: Phelan, P.J., Walker, J. (Not for Publication.)

A078190 -- The People v. Ondra Osborne Gwinn.

For all the foregoing reasons, the judgment of conviction, including the sentence imposed by the trial court, is affirmed in its entirety. Phelan, P.J. We concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A078719 -- The People v. Stephen Wayne Williams.

The judgment of conviction is affirmed. The matter is remanded to the trial court for the awarding of proper custody credits and sentencing on the sexual battery conviction. Corrigan, J. We concur: Phelan, P.J., Walker, J. (Not for Publication.)

DIVISION FOUR

A077255 -- The People v. Charles Christman.

The order sustaining the petition and committing appellant to Atascadero State Hospital is affirmed. Poché, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

Thursday, February 19, 1998 (continued)

A080507 -- In re Lance S., a Person Coming Under the Juvenile Court Law.

A079644 -- Marin County Department of Social Services v. Ronda S.

In cases A079644 and A080507, the order denying Ronda's petition for modification of dependency orders for changed conditions (§ 388) complies with the governing law and is supported by substantial evidence. In A080507, the petition for habeas corpus is denied. In the appeal in A079644, the order is affirmed. The stay previously issued is dissolved. Our decision is final in this court immediately.

In case A079991, the order for an updated adoption assessment and setting a new permanent placement hearing (Welf. & Inst. Code, § 366.26 complies with the governing law and is supported by substantial evidence. The petition for an extraordinary writ is denied on the merits (Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024). The stay previously issued is dissolved. Our decision is final in this court immediately. Hanlon, P.J. We concur: Reardon, J., McGuiness, J. (Not for Publication.)

FIRST APPELLATE DISTRICT
DIVISION TWO

Thursday, February 19, 1998

The Court met at 9:30 a.m. in its courtroom at 303 - 2nd Street, Fourth Floor, San Francisco. Present: Kline, P. J., Haerle, J., Ruvolo, J. and B. Robbins, Deputy Clerk.

A077998 George Nixon
 v.
 New United Motor Manufacturing, Inc.
Cause called and argued by Charles Wisch, counsel for appellant and Robert Fries, counsel for respondent. Cause ordered submitted.

At this point, the Court took a five-minute recess. The Court reconvened and present were Haerle, Acting P.J., Lambden, J., Ruvolo, J. and B. Robbins, Deputy Clerk.

A078494 Stephen J. Burdoin
 v.
 Wilson, Ryan & Campilongo, et al.
Cause called and argued by Malcolm Leader-Picone, counsel for appellant and Andrew Wilson, counsel for respondent. Cause ordered submitted.

A078374 Jerry Regan
 v.
 Bruce L. Simon, et al.
Cause called and argued by David Levine, counsel for appellant and Jan T. Chilton, counsel for respondent. Cause ordered submitted.

A074012/
A075621 Mark Hankins
 v.
 El Torito Restaurants, Inc., et al.
Cause called and argued by Paul Rein and Sidney Cohen, counsel for plaintiff and appellant Hankins and Gregory Hurley, counsel for defendants and appellants El Torito Restaurants. Cause ordered submitted..

A078026 The People
 v.

Anton Jack Denzinger

Deputy Attorney General Peggy S. Ruffra appeared on behalf of respondent. Counsel for appellant, Randall Knox, was not available for teleconference. Oral argument was therefore waived and cause ordered submitted.

Court adjourned.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, February 20, 1998

DIVISION ONE

A079474 -- The People v. Anthony Bernard Webb.

The judgment is affirmed. Stein, Acting P.J. We concur: Dossee, J., Swager, J. (Not for Publication.)

A081053 -- People of the State of California v. Daryl A. Walters.

By The Court: The above entitled appeal is transferred from Division Four to Division One of this court. We have determined that the appellant is a co-defendant in our case number A081052, People v. Bump, pending before Division One and as required by this court's Internal Operating Practices and Procedures, Section 21(b), the transfer of this case to Division One is necessary. This order is made pursuant to Rule 20(b)(1) of the California Rules of Court. Strankman, Administrative Presiding Justice.

DIVISION TWO

A074019 -- The People v. Klee Christopher Orthel.

By The Court: The petition for rehearing is denied. Kline, P.J.

Friday, February 20, 1998 (continued)

A074019/A079316 -- The People v. Klee Christopher Orthel.

By The Court: Since this court's January 21, 1998 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for partial publication is denied.

Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the subject opinion, and a copy of this order. Kline, P.J.

A077393 -- Singler-Ernster, Inc. v. Insurance Company of the West.

By The Court: Appellant's counsel having advised this court that the case has been settled, the appeal is dismissed as moot. Kline, P.J.

A081220 -- Contra Costa Newspapers, Inc. v. The Superior Court of Contra Costa County, Gayle Bishop, R.P.I.

The Court: We have reached our decision after notice to all parties that we might act by issuing a peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180.) The entitlement to relief is obvious and there is also a compelling urgency in light of the forthcoming hearing on real party's new trial motion. (See *Alexander v. Superior Court* (1993) 5 Cal.4th 1218; *Ng v. Superior Court* (1992) 4 Cal.4th 29.) Accordingly, let a peremptory writ of mandate issue commanding respondent superior court to vacate its order of June 18, 1997, prohibiting all press contact with the Bishop jurors and to allow the press access to the jurors in the Bishop trial who have been identified in public court records. Nothing in this opinion should be construed as requiring jurors to speak to the media or anyone else. A juror may speak or remain silent as he or she desires.

Our decision is final as to this court immediately. (Cal. Rules of Court, rule 24(d).) Before Kline, P.J.; Haerle, J.; Lambden, J. (Certified for Publication.)

A081550 -- In re Muharem Kurbegovich, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Kline, P.J.

Friday, February 20, 1998

DIVISION THREE

A073654 -- John Rivera v. Keyston Bros.

The judgment is reversed as to the award of emotional distress damages. In all other aspects, we affirm. Each party is to bear its own costs on appeal. Corrigan, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

A076330 -- Michael Murphy, et al. v. Peter Lynch, et al.

By The Court: The justices of Division Four of this Court have recused themselves in the above entitled matter. In compliance with this court's Internal Operating Practices and Procedures, Section 21(b), this case is transferred to Division Three. This order is made pursuant to Rule 20(b)(1) of the California Rules of Court. Strankman, Administrative Presiding Justice.

DIVISION FIVE

A078209 -- Thomas E. Grossi v. City of Oakland.

The judgment is affirmed. Jones, J. We concur: Peterson, P.J., Haning, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, February 23, 1998

DIVISION THREE

A071528 -- The Application Group, Inc., et al. v. The Hunter Group, Inc.

The judgment shall be modified to delete those portions relating to Pike's individual claims for relief. As thus modified, the judgment will be affirmed. The parties shall bear their own costs. Phelan, P.J. We concur: Parrilli, J., Walker, J. (Certified for Publication.)

A074653 -- The People v. Oliver J. Sylvester.

The judgment is affirmed. Parrilli, J. We concur: Phelan, P.J., Walker, J. (Not for Publication.)

DIVISION FOUR

A077136 -- The People v. Hershey Williams.

The judgment is affirmed. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

A079953 -- In re Rene R., a Person Coming Under the Juvenile Court Law.

The dispositional order is affirmed. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, February 24, 1998

DIVISION ONE

A074342, A075343 -- Profit Pak, Inc. v. Allen Nelson.

Judgment is affirmed. Swager, J. We concur: Strankman, P.J., Stein, J.
(Not for Publication.)

A079022 -- The People v. Alfred E. Dixon.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J.
(Not for Publication.)

DIVISION TWO

A077068 -- James D. Porche, et al. v. Hardin Mortgage & Investments, Inc.

By The Court: The petition for rehearing is denied. Kline, P.J.

A078421 -- Sergio Bernal v. American Woodworks et al.

We have no jurisdiction over Bernal's appeal and grant respondent's motion to dismiss. We hereby dismiss the appeal. Lambden, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Tuesday, February 24, 1998 (continued)

A081391 -- David A. Dye v. The Superior Court of Napa County, The People of the State of California, R.P.I.

By The Court: The petition for writ of prohibition/stay is denied and the temporary stay previously imposed is lifted. Kline, P.J.

A081705 -- In re Johnny Clifford Jackson, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Kline, P.J.

A081706 -- In re Ronnie Earl Howard, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Kline, P.J.

A081718 -- Fred and Beulah Thomson v. The Superior Court of Napa County.

By The Court: The petition for writ of mandate/prohibition is denied. Kline, P.J.

DIVISION FIVE

A077425 -- The People v. Benjamin Pilarczyk.

Appellant's conviction of count 3 is reversed. Although the sentence on count 5 should not have been stayed, the cost to the county of returning appellant from the Department of Corrections to seek a relatively minor increase in a sentence with a maximum of life imprisonment is a decision we leave to the district attorney. Consequently, unless the people move within 30 days of the issuance of our remittitur for resentencing, the trial court shall prepare and forward to the Department of Corrections an amended abstract of judgment reflecting the reversal of count 3. The judgment is otherwise affirmed. Haning, J. We concur: Peterson, P.J., Jones, J. (Not for Publication.)

Tuesday, February 24, 1998 (continued)

A079195 -- The People v. Tiffany Montgomery.

The judgment is affirmed. Haning, J. We concur: Peterson, P.J., Jones, J.
(Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION FOUR

Tuesday, February 24, 1998

Court convened at 9:30 a.m. in its courtroom at 303 Second Street, South Tower, Fourth Floor, San Francisco, California. Present: Hanlon, P.J., Poche, J. and Reardon, J.; Channing Hoo, Deputy Clerk; CHP Officer E. Swanson, Baliff.

- A078540 Cheryl Johnson Nemes
v.
Joyce Logan et al.
Cause called and argued by in pro per appellant Cheryl Johnson Nemes.
No appearance on behalf of the respondents. Cause ordered submitted.
- A077472 Ford & Vlahos
v.
Sucherman & Collins et al.
Cause called and argued by John G. Hanlin, counsel for appellant Ford & Vlahos, and by Anne F. Marchant, counsel for respondents. Cause ordered submitted.
- A075005 People
v.
Eugene Bryce Livingston
- A077271 In re Eugene Bryce Livingston on Habeas Corpus
Causes called and argued, through teleconference, by C. Elliot Kessler, counsel for appellant/petitioner Livingston, and, through teleconference, by Stan Helfman, counsel for respondent. Causes ordered submitted.

A078087 Jerry Zamudio et al.
v.
State of California et al.
Cause called and argued by Ronald Yank, counsel for appellants Zamudio et al., and by Alicia Fowler, counsel for respondents. Cause ordered submitted.

A077492 Wien Air Alaska, Inc. et al.
v.
Alexander Anolik
Cause called and argued by Marsha S. Berzon, counsel for appellant Anolik, and by Kevin R. Mintz, counsel for respondents. Cause ordered submitted.

A078258 Andrew J. Bell
v.
Wells Fargo Bank, N.A.
Cause called and argued by Charles J. Wisch, counsel for appellant Bell, and by David M. Rice, counsel for respondent. Cause ordered submitted.

The court recessed at 12:11 p.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, February 25, 1998

DIVISION ONE

A078602 -- The People v. Reginald Blackwell.

Accordingly, the judgment is affirmed. Swager, J. We concur: Strankman, P.J., Dossee, J. (Not for Publication.)

DIVISION TWO

A076196 -- The People v. Kurt Peter Norlin.

By The Court: The petition for rehearing is denied. Appellant's motion for leave to file motion to settle record in the superior court is also denied. Kline, P.J.

A076260 -- The People v. Emad Ayyoub.

By The Court: Appellant's motion for leave to treat portions of the petition for rehearing as a supplemental brief is denied. The petition for rehearing is also denied. Kline, P.J.

DIVISION THREE

A075818 -- The People v. Rene Mejia.

Affirmed. Walker, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

Wednesday, February 25, 1998 (continued)

A076798 -- Zurich Insurance Company v. The Hertz Corporation.

By The Court: Since this court's opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied.

Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the subject opinion, and a copy of this order. Phelan, P.J.

A076912 -- Michael D. Venegas v. Workers' Compensation Appeals Board et al.

The decision of the Workers' Compensation Appeals Board is affirmed. Phelan, P.J. We concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A078610 -- The People v. Michael David Speck.

The judgment is affirmed. Corrigan, Act. P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

A079024 -- The People v. Juan Luis Anguiano.

The judgment is affirmed. Corrigan, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

DIVISION FOUR

**IN THE MATTER OF THE ASSIGNMENT OF THE HONORABLE
ZERNE P. HANING III.**

By The Court: It is ordered that the assignment of the Honorable Zerne P. Haning III, Associate Justice of the Court of Appeal, First Appellate District, Division Five to sit as a Justice in Division Four, be spread upon the minutes in full. Hanlon, P.J.

Wednesday, February 25, 1998 (continued)

A076762 -- The People v. Delbert Raymond Barnett.

We affirm the judgment. Reardon, J. We concur: Hanlon, P.J., Poché, J.
(Not for Publication.)

DIVISION FIVE

**IN THE MATTER OF THE ASSIGNMENT OF THE HONORABLE
IGNAZIO J. RUVOLO.**

By The Court: It is ordered that the assignment of the Honorable Ignazio J. Ruvolo, Associate Justice of the Court of Appeal, First Appellate District, Division Two, to sit as a Justice in Division Five, be spread upon the minutes in full.
Peterson, P.J.

A068667 -- The People v. Scott Allan Wright.

The judgment of conviction is affirmed. Peterson, P.J. We concur:
Haning, J., Jones, J.(Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION FIVE

Wednesday February 25, 1998

Court convened at 9:30 a.m. in its Courtroom at 303 Second Street, South Tower, Fourth Floor, San Francisco, California. Present: Peterson, P.J.; Haning, J.; Jones, J.; and Richard H. Sandvik, Deputy Clerk.

- A079402 California Labor Federation AFL-COI et al.
 v.
 Industrial Welfare Commission
 Cause called and argued by Charles P. Scully, II, counsel for
 appellant, and by Randall P. Borcharding, counsel for respondent.
 Cause ordered submitted.
- A075779 Susan Vineyard
 v.
 Total Trade et al.
 Cause called and argued by Peter N. Lamberto, counsel for
 appellant, and by Tia Pollastrini, counsel for respondent. Cause
 ordered submitted.
- A076339 Colleen Soldate
 v.
 Fidelity National Title Insurance Company et al.
 Cause called and argued by Marilyn P. Curry, counsel for appellant,
 and by Kenneth Kennedy, counsel for respondent. Cause ordered
 submitted.

A078521 Curtis Allen
 v.
 Deborah Herman
 and
A079415 County of Mendocino
 v.
 Jason Stevens
 Curtis Allen, Real Party in Interest
 Causes called and argued by Curtis Allen, appellant, in pro per and
 by H. James Lance, counsel for respondent, county counsel did not
 appear. Cause ordered submitted.

A075738 Greer Nuewald Builders, Inc.
 v.
 Lyman E. Dean et al.
 Cause called and argued by Richard E. McGreevy, counsel for
 appellant, and by Thomas H. Poeschl, Jr., counsel for respondent.
 Cause ordered submitted.

A077973 The People
 v.
 Richard Kay Scott
 Cause called and argued by Linda M. Leavitt, counsel for appellant,
 and by Matthew P. Boyle, Deputy Attorney General, counsel for
 respondent. Cause ordered submitted.

Court adjourned at 12:35 p.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, February 26, 1998

DIVISION ONE

A078192 -- In re Ishmael J., a Minor.

The orders of the juvenile court are affirmed. Dossee, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A079852 -- The People v. Edward Lewis Rael.

The judgment is affirmed. Dossee, J. We concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A081216 -- Sheryl Lynne W. v. The Superior Court of Contra Costa County, Contra Costa County Department of Social Services, R.P.I.

The challenged orders are supported by substantial evidence. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.) The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, §14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.)

The section 366.26 hearing is set for March 9, 1998. Therefore, our decision is final in this court immediately. Swager, J. We concur: Stein, Acting P.J., Dossee, J. (Not for Publication.)

Thursday, February 26, 1998 (continued)

DIVISION TWO

A077918 -- The People v. Melissa Queen.

The judgment is affirmed. Haerle, J. We concur: Kline, P.J., Lambden, J.
(Not for Publication.)

DIVISION THREE

A075466 -- The People v. Bradley Charles Van Dyke.

Affirmed. Walker, J. We concur: Corrigan, Acting P.J., Parrilli, J. (Not
for Publication.)

**A078508 -- In re Danny V., a Person Coming Under the Juvenile Court
Law.**

Because there was no adequate showing of reasonable diligence, the
hearsay statements of Mr. Godinez presented under Evidence Code section 1370
were erroneously admitted. Since these were manifestly essential to prove the
elements of the offenses charged, the error was prejudicial and reversal is
acquired.

The jurisdictional finding and dispositional order are reversed. Phelan, P.J.
We concur: Corrigan, J., Walker, J. (Not for Publication.)

A078586 -- The People v. Ernest Holdman.

The judgment is affirmed. Walker, J. We concur: Phelan, P.J., Parrilli, J.
(Not for Publication.)

A078795 -- The People v. James Odle.

Affirmed. Walker, J. We concur: Corrigan, Acting P.J., Parrilli, J. (Not
for Publication.)

Thursday, February 26, 1998 (continued)

A079186 -- Lauren K. v. Sharon M.

The order denying the petition to terminate the guardianship is affirmed. Phelan, P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

DIVISION FOUR

A070809 -- Bruce Springmeyer et al. v. Ford Motor Company et al.

Order Modifying Opinion and Denying Rehearing: It is ordered that the opinion filed herein on January 27, 1998, be modified as follows: (See Order) These modifications do not change the judgment. The petition for rehearing is denied. Hanlon, P.J. (Certified for Publication.)

A074587 -- The People v. Zip Howser.

The order modifying probation is reversed. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

A076570 -- In re Estellea Marie F. et al., Persons Coming Under the Juvenile Court Law.

The order terminating appellant's parental rights is affirmed. Hanlon, P.J. We concur: Reardon, J., McGuiness, J. (Not for Publication.)

A078048 -- In re Henry M., a Person Coming Under the Juvenile Court Law.

A078510 -- In re Augustin M., a Person Coming Under the Juvenile Court Law.

The judgment as to each appellant is affirmed. Reardon, J. We concur: Poché, Acting P.J., McGuiness, J. (Not for Publication.)

Thursday, February 26, 1998 (continued)

A080293 -- In re Joel C., a Person Coming Under the Juvenile Court Law.

By The Court: Joel C. (Appellant) appeals from a juvenile court order adjudicating him a ward of the court and placing him on formal probation under the supervision of the probation department. He contends the juvenile court erred in so ordering after simultaneously placing him on diversion for mentally retarded defendants under Penal Code section 1001.20 et seq. (*People v. Bagby* (1977) 74 Cal.App.3d 986, 988.) The People agree with appellant's position, and request that the order adjudicating appellant a ward and placing him on probation be vacated, leaving undisturbed the order placing appellant on diversion.

In light of the People's stipulation, and good cause appearing, the order of the juvenile court adjudicating appellant a ward of the court and placing him on probation under the supervision of the probation department is vacated. The order of the juvenile court placing appellant on diversion under Penal Code section 1001.20 is affirmed without change. Hanlon, P.J., Poché, J. and McGuiness, J.

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Thursday, February 26, 1998

The Court met at 9:00 a.m. in its courtroom at 303 - 2nd Street, Fourth Floor, San Francisco. Present: Dossee, Acting P.J., Swager, J. and N. Millner, Deputy Clerk.

Justice Dossee announced that Justice Strankman was recovering from an operation due to an accident. He informed all counsels that Justice Strankman would have tapes from oral argument and that he was familiar with all the cases and he has read all the briefs. He then asked would all counsels stipulate to continue without Justice Strankman. All counsels stipulated to continue without Justice Strankman.

- A077706 Donna Vavuris,
v.
Michael J. Carboni.
Cause called and argued by Richard Gardella, counsel for appellant, and David McKim, counsel for respondent. Cause ordered submitted.
- A079168 Mary P. Vogel,
v.
County of San Mateo.
Cause called and argued by Roy Ellis Harper, counsel for appellant, and Leigh Herman, counsel for respondent. Cause ordered submitted.
- A076197 Mohini Robinson,
v.
Livermore Valley Joint Unified School District.
Cause called and argued by Bryce Anderson, counsel for appellant, and Laurie Reynolds, counsel for respondent. Cause ordered submitted.

Court recessed until 2:00 p.m.

Court reconvened at 2:00 p.m. Present: Stein, Acting P.J., Swager, J., and I. Cespedes, Deputy Clerk.

Justice Stein announced that Justice Strankman was recovering from an operation due to an accident. He informed all counsels that Justice Strankman would have tapes from oral argument and that he was familiar with all the cases and he has read all the briefs. He then asked would all counsels stipulate to continue without Justice Strankman. All counsels stipulated to continue without Justice Strankman except for counsels in case number A081280 (In re Patricia McColm on Habeas Corpus). Ms. McColm, in pro per, and Buck Delventhal, counsel for respondent, requested to continue the matter. Justice Stein informed all counsels that the matter would be continued to March 26, 1998 at 9:00 a.m.

- A078036 Ojan Ghavimi,
v.
Department of Motor Vehicles et al.
Cause called and argued by Regina Brown, counsel for appellant, and Michael Coder, counsel for respondent. Cause ordered submitted.
- A078042 Paul Hughes et al.,
v.
Mandy Ruth Carter et al.
Cause called and argued by Chris Arras, counsel for respondents. There was no appearance by Paul Hughes, in pro per. Cause ordered submitted.
- A079253 Trevor Thomson,
v.
The Southland Corporation et al.
Cause called and argued by Milton Katz, counsel for appellant, and Howard Pearlman, counsel for respondent. Cause ordered submitted.
- A078246 Robert DeVries et al.,
v.
United Airlines.
Cause called and argued by Robert DeVries, in pro per, and Abraham Simmons, counsel for respondent. Cause ordered submitted.
- A078115 The People,
v.
Mario Alberto Miranda,
Cause called and argued by Paul Kaplan, counsel for appellant, via

teleconference, and Bruce Ortega, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court recessed until Friday, February 27, 1998 at 9:00 a.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, February 27, 1998

DIVISION ONE

A077392 -- Bruce A. Glass et al. v. Reza Najafi et al.

As the trial court aptly observed, the settlement agreement actually contemplated that *future* unlawful detainer actions might become necessary. One paragraph provides that the tenants waive all claims of ownership of the properties, except as provided in the option agreement, “in any subsequent unlawful detainer proceeding.” The trial court reasoned that the landlords’ remedy for regaining possession of the premises was to institute an unlawful detainer action.

We agree. In the absence of a judgment for possession of the property, the writs of possession were improperly issued and were properly recalled and quashed.

The order quashing the writs of possession is affirmed. Dossee, J. We concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A078342 -- In re Jose Rosario G., a Minor.

The judgment is affirmed. Dossee, J. We concur: Stein, Acting, P.J., Swager, J. (Not for Publication.)

Friday, February 27, 1998 (continued)

DIVISION TWO

A071967 -- The People v. Neil Rennis Shumate.

A080138 -- In re Neil Rennis Shumate On Habeas Corpus.

With the exception of that part of the judgment convicting Shumate of four counts of assault with intent to commit a lewd and lascivious act on a child under the age of fourteen years (James H.), which we reverse, we affirm the judgment and deny the writ of habeas corpus. Haerle, Acting P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A072915 -- Saeed Chaudhary v. Roger Chung, et al.

By The Court: The appellant having filed a request for dismissal in this court, the appeal on file herein is ordered dismissed. Kline, P.J.

A073001 -- Saeed Chaudhary v. Roger Chung, et al.

By The Court: The appellant having filed a request for dismissal in this court, the appeal on file herein is ordered dismissed. Kline, P.J.

A076840 -- Therese Petrini et al. v. Mohasco Corporation.

The judgment is reversed. Lambden, J. We concur: Kline, P.J., Ruvolo, J. (Certified for Publication.)

A076875 -- Steve Liem v. Wai Yee Wong Young.

By The Court: The appellant having failed to file a brief after notice given under rule 17(a), California Rules of Court, the appeal is dismissed. Kline, P.J.

A078026 -- The People v. Anton Jack Denzinger.

The judgment is affirmed. Lambden, J. We concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Friday, February 27, 1998 (continued)

A080511 -- In re Sylvia B., a Person Coming Under the Juvenile Court Law.

By The Court: The appellant having failed to file a brief after notice given under rule 17(a), California Rules of Court, the appeal is dismissed. Kline, P.J.

A080524 -- In re Chelse F., a Person Coming Under the Juvenile Court Law.

By The Court: The appellant having failed to file a brief after notice given under rule 17(a), California Rules of Court, the appeal is dismissed. Kline, P.J.

A080754 -- In re Sam L., a Person Coming Under the Juvenile Court Law.

By The Court: The appellant having failed to file a brief after notice given under rule 17(a), California Rules of Court, the appeal is dismissed. Kline, P.J.

DIVISION THREE

A073083 -- In re Casey F., a Person Coming Under the Juvenile Court Law.

A078163 -- In re Casey F., on Habeas Corpus.

The judgment is affirmed. The petition for writ of habeas corpus is denied. Corrigan, Act. P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

DIVISION FOUR

A076749 -- The People v. Randall David Capps.

The judgment is affirmed. Reardon, J. We concur: Hanlon, P.J., McGuiness, J. (Not for Publication.)

Friday, February 27, 1998 (continued)

A077183 -- Philip R. Joy v. Sea Surveyor, Inc., et al.

The judgment is affirmed, with costs to respondent Joy. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

A077202 -- The People v. Daniel Reyes Arzate.

The judgment is affirmed. Poché, Acting P.J. We concur: Reardon, J., McGuiness, J. (Not for Publication.)

A077699 -- The People v. Anthony Mora Lopez.

The cause is remanded to the trial court for the limited purpose of allowing the trial court to exercise the discretion granted by Penal Code section 1170.12, subdivision (a)(7). If the trial court exercises its discretion to order concurrent sentences, it shall resentence defendant and forward an amended abstract of judgment to the Department of Convictions. If the trial court exercises its discretion to again impose consecutive sentences, it shall enter an order to that effect. The judgment of conviction is affirmed in all other respects. Poché, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A077832 -- Lee Benson et al. v. Lucky Stores, Inc.

The order granting the motion to tax costs is affirmed, with costs on appeal to respondent. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

A077856 -- In re Robert T., Jr., a Person Coming Under the Juvenile Court Law.

The order is affirmed. Hanlon, P.J. We concur: Reardon, J., McGuiness, J. (Not for Publication.)

A078540 -- Cheryl Johnson Nemes v. Joyce Logan.

The Court: The judgment is affirmed. Each party shall bear her own costs of appeal. Hanlon, P.J., Poché, J. and Reardon, J. (Not for Publication.)

Friday, February 27, 1998 (continued)

A079030 -- The People v. Joseph T. Smith.

The judgment is affirmed. Hanlon, P.J. We concur: Poché, J., McGuinness, J. (Not for Publication.)

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Friday, February 27, 1998

The Court met at 9:00 a.m. in its courtroom at 303 - 2nd Street, Fourth Floor, San Francisco. Present: Stein, J., Dossee, J. and I. Cespedes, Deputy Clerk.

Justice Stein announced that Justice Strankman was recovering from an operation due to an accident. He informed all counsels that Justice Strankman would have tapes from oral argument and that he was familiar with all the cases and he has read all the briefs. He then asked would all counsels stipulate to continue without Justice Strankman. All counsels stipulated to continue without Justice Strankman.

- A079974 Estate of Sam Zakessian, Deceased.
 Carolyn J. Davis,
 v.
 George Gagos et al.
 Cause called and argued by Patrick O'Donnell, counsel for appellant, and
 Charles Wolff, counsel for respondent. Cause ordered submitted.
- A077468 Sierra Club,
 v.
 California Coastal Commission;
 California Dept. of Transportation, RPI.
 Cause called and argued by Mark Massara, counsel for appellant, Marjorie
 Cox, counsel for respondent, and Stephen Contopulos and Roger Lyon,
 counsel for real party in interest. Cause ordered submitted.
- A078522 Donald J. Mindham et al.,
 v.
 Plant Bros. Corp.
 Cause called and argued by Daniel U. Smith, counsel for appellant, and
 Chris Wood, counsel for respondent. Cause ordered submitted.
- A074729 The People,
 v.
 Stephen Louis Gaier.

Cause called and argued by Ozro Childs, counsel for appellant, and Ross Moody, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A078686 In re the Marriage of Linda and Richard Rogers.

Linda Rogers,

v.

Richard Rogers.

Cause called and argued by Richard Rogers, in pro per, and Mary Roth, via teleconference, counsel for respondent. Cause ordered submitted.

Court recessed until 2:00 p.m.

Court reconvened at 2:00 p.m. Present: Stein, Acting P.J., Dossee, J., Swager, J., and N. Millner, Deputy Clerk.

Justice Stein announced that Justice Strankman was recovering from an operation due to an accident. He informed all counsels that Justice Strankman would have tapes from oral argument and that he was familiar with all the cases and he has read all the briefs. He then asked would all counsels stipulate to continue without Justice Strankman. All counsels stipulated to continue without Justice Strankman.

- A077005 Angelo Arena,
 v.
 Owens Corning et al.
Cause called and argued by James Oberman, counsel for appellant, and Thomas Peterson, counsel for respondent. Cause ordered submitted.
- A079004 The People,
 v.
 Lloyd Wayne Harrison.
Cause called and argued by Kimberly Fitzgerald, counsel for appellant, and Raymond Cardozo, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A075247 The People,
A079560 v.
 Ramon Luciano Garcia.
 In re Ramon Garcia on Habeas Corpus.
Cause called and argued by Robert Derham, via teleconference, counsel for appellant, and Gregory Ott, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A077243 The People,
 v.
 Oscar Mickey Curry.
Cause called and argued by Arnold Erickson, counsel for appellant, and Ross Moody, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A071436 The People,
 v.
 Loi Khac Nguyen.

Cause called and argued by David Carico, counsel for appellant, and David Salmon, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED